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JST DISTRIBUTION LLC

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION**

JST DISTRIBUTION, LLC, a Texas  
Limited Liability Company,

Plaintiff,

vs.

CHIVANA SAFFRON LLC, a North  
Carolina Limited Liability Company  
d/b/a/ Ultra X Shop, NutraSup and  
Full Central and DOES 1 through 10,  
inclusive,

Defendants.

CASE NO.

**COMPLAINT FOR FALSE  
ADVERTISING IN VIOLATION OF  
THE LANHAM ACT § 42 (a)(1)(B)**

**DEMAND FOR A JURY TRIAL**

Plaintiff JST Distribution, LLC, a Texas Limited Liability Company (“JST Distribution” or “Plaintiff”), by and through its undersigned attorneys, submits this Complaint against defendant Chivana Saffron LLC, a North Carolina Limited Liability Company, d/b/a Ultra X Shop, NutraSup, and FullCentral (“Chivana” or “Defendant”) and Does 1-10, and in support thereof avers as follows:

## INTRODUCTION

1. Defendant Chivana knowingly sells unlawful sexual enhancement products containing prescription drugs, and has refused to stop despite numerous warnings.

2. Specifically, Chivana sells male enhancement products, including but not limited to Alpha Male, Black 3k Plus Male Sexual Enhancement Capsules, Black Panther, Boss-Rhino Gold X-tra Strength, One More Knight 1750, Rhino 7 Platinum 3000, Rhino 7 Platinum 5000, Rhino 8 Platinum 8000, Super Panther 7K, Triple Green Capsules, Triple MiracleZen Gold 1750 mg and Ultra SX Capsules (the “Illicit Products”) on its websites, including but not limited to <https://http://www.groundnpound.org/www.ultraxshop.com/>, <http://fullcentral.com> and <https://www.nutrsup.com/>. Independent testing has demonstrated that the Illicit Products contain Sildenafil, the active ingredient in Viagra, which has deadly contraindications and is only available with a prescription.

3. Plaintiff, the manufacturer of a competing product called “Powerful Desire,” has demanded that Chivana cease and desist from the sale of the Illicit Products on the grounds that their sale of mislabeled products violates the Lanham Act. In this regard, all of the Illicit Products contain false statements, including that the Illicit Products are “All Natural,” “herbal,” and “Doctor Designed.” Aside from these patently false statements, Chivana has failed to disclose the true nature of the Illicit Products to its customers, even though Chivana aware of their dangerous secret ingredients. Indeed, Chivana has taken the position that its advertisements which represent to consumers that there is “no prescription necessary” are not false because the Illicit Products “do not require a prescription for purchase.” However, as of the time of this lawsuit, Defendant continues to market Alpha Male, Rhino 8, and Rhino 7 Platinum 3000, *all of which contain Sildenafil*.

4. Defendant's brazen refusal to stop its illicit sale of products spiked with Sildenafil speaks volumes about the illegal male enhancement supplement industry that has flourished in the shadows of weak regulatory and criminal enforcement of nutritional supplement laws. Wholesalers like Defendant who have made significant profits selling dangerous products remain cavalier about their future prospects despite engaging in illegal activity openly. In this regard, the FDA has issued several public notices regarding the use of Sildenafil in over the counter "male enhancement" supplements, but has only pursued criminal action intermittently.

5. Thus, Plaintiff's only recourse is a civil action to protect the commercial interests recognized by the Lanham Act. As such, Defendant has knowingly and materially participated in a false and misleading advertising campaign to promote and sell its Illicit Products, giving consumers the false impression that these products are safe when in reality, Defendant admits to knowing that its Illicit Products contain hidden drug ingredients that require a prescription from a medical doctor.

6. Defendant's false and misleading advertising is harmful to the dietary supplement industry as a whole and to individual consumers. Defendant has created an illegitimate marketplace of consumers seeking to enhance their sexual performance, but who are not informed or are misinformed of the serious dangers of using Defendant's Illicit Products. Consumers of the Illicit Products have little or no incentive to use legitimate and safe sexual performance enhancement products, such as "Powerful Desire," until they are injured or Defendant's Illicit Products are taken off of the shelves. Defendant's continuing false, misleading, illegal, and deceptive practices have violated the Lanham Act, have unjustly enriched Defendant at the expense of JST Distribution, and have caused JST

Distribution extensive and irreparable harm, including but not limited to, loss of revenue, disparagement, and loss of goodwill.

7. Among other things, this action seeks to enjoin Defendant from the marketing and sale of any and all of its Illicit Products, as Defendant is illegally and falsely marketing such products in violation of the Lanham Act.

### **JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1332 (diversity jurisdiction) because Plaintiff asserts causes of action arising under federal law and the parties are citizens of different states and the controversy exceeds the value of \$75,000.

9. This Court has personal jurisdiction over Defendant because it is located in this district.

10. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions which gave rise to the claim occurred in this district.

### **PARTIES**

11. Plaintiff JST Distribution is a Texas limited liability company, which lists as its principal place of business: 26029 Aldine Westfield Rd., Ste. 206, Spring, Texas, 77373.

12. Defendant Chivana Saffron LLC, a North Carolina Limited Liability Company, d/b/a Ultra X Shop, NutraSup, and FullCentral is a North Carolina Limited Liability Company. Chivana with its principal office located at 3946 Glenlea Commons Drive, Charlotte, NC 28216-9513.

13. Plaintiff is ignorant of the true names and capacities of defendants sued herein as Does 1- 10, inclusive, and therefore sued these defendants by such fictitious names. Plaintiff will amend this Complaint to allege their true names and

capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of these fictitiously named defendants is responsible in some manner for the occurrences herein alleged, and that Plaintiff's injuries as herein alleged were proximately caused by the aforementioned defendants.

### **FACTUAL ALLEGATIONS**

14. According to recent public warnings issued by the FDA, there is a growing trend in the supplement industry of mislabeling "dietary supplements" that contain potentially harmful hidden drugs and chemicals. Unscrupulous supplement manufacturers, wholesalers, and retailers market and advertise these products as enhancing sexual performance, weight loss, and bodybuilding, and misrepresent their products as being "all natural." Contrary to their representations, these purported "dietary supplements" actually contain potentially harmful hidden ingredients and drugs, and require a prescription from a medical doctor for proper use.

### **Plaintiff and "Powerful Desire"**

15. Plaintiff JST Distribution manufactures and offers for sale the product, "Powerful Desire" a male sexual performance enhancement pill available in retail stores and online. JST Distribution also owns and operates the online retail website [powerfuldesire.com](http://powerfuldesire.com), which advertises and offers for sale "Powerful Desire." "Powerful Desire" is an all-natural pill.

### **Defendant and Its Illicit Products**

16. Chivana is a retail company, which owns and operates a number of websites, including but not limited to <http://www.groundnpound.org>, <http://www.ultraxshop.com/>, <http://fullcentral.com>, and <https://www.nutrsup.com/>. Via its websites, Chivana advertises and offers for sale various sexual enhancement supplements, including but not limited to, 5K, Exten

Zone 3000 Super Panther 7K Rhino 7 Platinum 5000, Rhino 69 Platinum 9000, (“Illicit Products”).

17. Chivana has taken the position that its advertisements which represent to consumers that there is “no prescription necessary” are not false because the Illicit Products “do not require a prescription for purchase.” Chivana’s position is patently wrong. All of the Illicit Products contain the hidden drug ingredient Sildenafil. Defendant is aware that the Illicit Products contain Sildenafil but continues to sell the Illicit Products. Thus, Defendant’s representations regarding these products are false and misleading.

18. Worse yet, the sale of products containing hidden drug ingredients, without requiring a prescription and without informing consumers of the health and safety risks of these drugs, seriously endangers the public.

19. Defendant’s false and misleading advertising is harmful to Defendant and to the dietary supplement industry as a whole. Defendant has created an illegitimate marketplace of consumers seeking to enhance their sexual performance, but who are not informed or are misinformed of the serious dangers of using Defendant’s Illicit Products. Consumers of the Illicit Products have little or no incentive to use safe and legitimate sexual performance enhancement products, such as “Powerful Desire,” until they are harmed or Defendant’s Illicit Products are taken off of the shelves.

### **CLAIMS FOR RELIEF**

#### **FIRST CLAIM FOR RELIEF**

##### **(False Advertising in Violation of Section 43(a)(1)(B) of the Lanham Act)**

20. Plaintiff incorporates the allegations contained in the foregoing paragraphs as though fully set forth herein in their entirety.

21. On its websites, Chivana advertises and offers for sale various sexual enhancement supplements, including but not limited to, the Illicit Products.

22. The Illicit Products are marketed as herbal supplements, but in reality they contain the synthetic drug Sildenafil. Thus, Defendant's representations regarding these products are false and misleading.

23. Defendant has knowingly and materially participated in a false and misleading advertising campaign to promote and sell its Illicit Products, giving consumers the false impression that these products are herbal supplements that are "all natural," with "no prescriptions necessary." In reality, Defendant knew that its Illicit Products contain hidden drug ingredients and actually require a proper prescription from a medical doctor.

24. The use of such falsely advertised products has the tendency to deceive a substantial segment of the public and consumers into believing that they are purchasing a product with drastically different characteristics.

25. The deception is material because it is likely to influence a consumer's purchasing decisions, especially if the consumer is concerned about the consequences of taking certain prescription-only drugs without the supervision of a medical doctor, or alternatively, believes that he/she does not need a prescription to take the drugs that are active ingredients in Defendant's Illicit Products.

26. Defendant has introduced its false and misleading statements into interstate commerce via marketing and advertising on various websites and shipment of its products containing false and misleading advertising into interstate commerce.

27. Plaintiff has been injured as a result of Defendant's false and misleading statements. Specifically, Defendant's false and misleading advertising concerning the Illicit Products has negatively impacted Plaintiff's commercial interests, including Plaintiff's sales of "Powerful Desire," because both products are intended for sexual performance enhancement and target the same consumers.

Thus, Defendant's false and misleading representations regarding the Illicit Products have resulted in the diversion of sales from Plaintiff.

28. Defendant's actions further damage Plaintiff's commercial interests by corrupting the marketplace for male enhancement products. Knowledgeable consumers are less likely to purchase male enhancement supplements generally if they are aware that competitors like Defendant spike their products with undisclosed drugs.

29. Defendant's actions, as described above, constitute false and misleading descriptions and misrepresentations of fact in commerce that, in commercial advertising and promotion, misrepresent the nature, characteristics, and qualities of its products in violation of Section 43(a)(1)(B) of the Lanham Act.

### **PRAYER**

Wherefore, Plaintiff JST Distribution LLC prays for judgment against Defendant Chivana Saffron, LLC as follows:

1. For preliminary and permanent injunctive relief enjoining Defendant from producing, licensing, marketing, and selling its various purported "Research Chemicals," including but not limited to, Tadalafil, Sildenafil, and Vardenafil;
2. For an award of compensatory damages to be proven at trial in accordance with 15 U.S.C. § 1117;
3. For an award of any and all of Defendant's profits arising from the foregoing acts in accordance with 15 U.S.C. § 1117 and other applicable laws;
4. For restitution of Defendant's ill-gotten gains;
5. For treble damages in accordance with 15 U.S.C. § 1117;
6. For punitive damages;
7. For costs and attorneys' fees; and



8. Any other relief the Court may deem appropriate.

DATED: September 11, 2017

TAULER SMITH LLP

By:     /s/ Robert Tauler      
Robert Tauler  
JST DISTRIBUTION LLC

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury.

DATED: September 11, 2017

TAULER SMITH LLP

By:       /s/ Robert Tauler        
Robert Tauler  
JST DISTRIBUTION LLC

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who have consented to electronic service on this 11th day of September, 2017. Local Rule CV-5(a)(3)(A)

      /s/ Robert Tauler        
Robert Tauler